

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1620

Citations Affected: IC 20-5-2-7; IC 20-6.1-4-10; IC 20-6.1-4-10.5; IC 34-13-4-1; IC 34-30-2-84.5; IC 35-42-4-7.

Synopsis: School employees. Conference committee report for EHB 1620. Makes changes relating to the policies a school may adopt concerning criminal history checks. Requires a prosecuting attorney to notify the state superintendent of public instruction and the employer when a licensed school employee is convicted of certain offenses. Makes changes in the grounds for which teachers' licenses may be revoked and contracts may be canceled. In a tort action against a governmental employee whose act or omission is in the scope of the employee's employment, provides that the governmental entity and employee are not liable for punitive damages and requires a governmental entity to pay a judgment of a claim or suit against the employee when the governmental entity has the opportunity to defend the employee. In a civil rights action against a governmental employee, requires a governmental entity to pay a judgment for punitive damages, compromise, or settlement against an employee when: (1) the act or omission causing the loss is in the scope of the employee's employment; (2) the governmental entity has the opportunity to defend the employee; and (3) the compromise or settlement is in the best interest of the governmental entity. Provides that a governmental entity or employee acting in the scope of employment is not liable if a loss results from an injury to a person assigned to a pretrial conditional release program. Provides civil immunity for making certain reports concerning a teacher. Changes the law concerning seduction of a child at least 16 years of age to add certain actions that constitute the offense and to expand coverage to all employees of a child's school. **(This conference committee report: (1) removes a provision increasing the exempt amount a retired teacher who is reemployed may earn; (2) removes a provision concerning temporary teacher contracts; and (3) adds the provisions of HB 1864 concerning school employees.)**

Effective: July 1, 2003.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1620 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 20-5-2-7, AS AMENDED BY P.L.272-2001,
- 3 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2003]: Sec. 7. (a) A school corporation, including a school
- 5 township, shall adopt a policy concerning criminal history information
- 6 for individuals who:
 - 7 (1) apply for:
 - 8 (A) employment with the school corporation; or
 - 9 (B) employment with an entity with which the school
 - 10 corporation contracts for services;
 - 11 (2) seek to enter into a contract to provide services to the school
 - 12 corporation; or
 - 13 (3) are employed by an entity that seeks to enter into a contract to
 - 14 provide services to the school corporation;
 - 15 if the individuals are likely to have direct, ongoing contact with
 - 16 children within the scope of the individuals' employment.
 - 17 (b) A school corporation, including a school township, shall
 - 18 administer a policy adopted under this section uniformly for all
 - 19 individuals to whom the policy applies. A policy adopted under this
 - 20 section may require any of the following:
 - 21 (1) The school corporation, including a school township, may
 - 22 request limited criminal history information concerning each

applicant for noncertificated employment or certificated employment from a local or state law enforcement agency before or not later than three (3) months after the applicant's employment by the school corporation.

(2) Each individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation to request under IC 5-2-5 limited criminal history information or a national criminal history background check concerning the individual before or not later than three (3) months after the individual's employment by the school corporation. The school corporation may require the individual to provide a set of fingerprints and pay any fees required for a national criminal history background check.

(3) Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 5-2-5-1(1)) to the school corporation.

(4) Each individual hired for noncertificated employment may be required at the time the individual is hired to:

(A) submit a request to the Indiana central repository for limited criminal history information under IC 5-2-5;

(B) obtain a copy of the individual's limited criminal history; and

(C) submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in IC 5-2-5-1(6)) that does not appear on the limited criminal history.

(5) Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to answer questions concerning the individual's limited criminal history. The failure to answer honestly questions asked under this subdivision is grounds for termination of the employee's employment.

(6) Each individual that:

(A) seeks to enter into a contract to provide services to a school corporation; or

(B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in ~~subdivision (4)(A) and (4)(B):~~ **The school corporation either may require that the individual or the contractor comply with the procedures described in subdivision (4)(C) or (5): subdivisions (2), (4), and (5). An individual who is employed by an entity that seeks to enter into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program may be required to provide the consent described in subdivision (2) or the information described in subdivisions (4) and (5) to either the individual's employer or the school corporation.** Failure to comply with subdivisions (2), (4), and (5), as required by the school corporation, is grounds for termination of the contract. **An entity that enters into a contract**

1 with a school corporation to provide student services in which
 2 the entity's employees have direct contact with students in a
 3 school based program is allowed to obtain limited criminal
 4 history information or a national criminal history background
 5 check regarding the entity's applicants or employees in the
 6 same manner that a school corporation may obtain the
 7 information.

8 (c) If an individual is required to obtain a limited criminal history
 9 under this section, the individual is responsible for all costs associated
 10 with obtaining the limited criminal history.

11 (d) Information obtained under this section must be used in
 12 accordance with IC 5-2-5-6.

13 SECTION 2. IC 20-6.1-3-7, AS AMENDED BY P.L.37-2000,
 14 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2003]: Sec. 7. (a) On the written recommendation of the state
 16 superintendent, the board may **suspend or** revoke a license for:

- 17 (1) immorality;
- 18 (2) misconduct in office;
- 19 (3) incompetency; or
- 20 (4) willful neglect of duty.

21 However, for each **suspension or** revocation, the board shall comply
 22 with IC 4-21.5-3.

23 (b) **This subsection applies when a prosecuting attorney knows**
 24 **that a licensed employee of a public school (as defined in**
 25 **IC 20-10.1-1-2) or a nonpublic school has been convicted of an**
 26 **offense listed in subsection (d). The prosecuting attorney shall**
 27 **immediately give written notice of the conviction to the following:**

- 28 (1) The state superintendent.
- 29 (2) **Except as provided in subdivision (3), the superintendent of**
 30 **the school corporation that employs the licensed employee or**
 31 **the equivalent authority for the nonpublic school.**
- 32 (3) **The presiding officer of the governing body of the school**
 33 **corporation that employs the licensed employee, if the**
 34 **convicted licensed employee is the superintendent of the school**
 35 **corporation.**

36 (c) The superintendent of a school corporation, **presiding officer of**
 37 **the governing body**, or equivalent authority for ~~an accredited~~ a
 38 nonpublic school shall immediately notify the state superintendent
 39 when the person knows that a current or former licensed employee of
 40 the **public school corporation** or ~~accredited~~ nonpublic school has been
 41 convicted of an offense listed in subsection ~~(c)~~ (d).

42 ~~(c)~~ (d) The board, after holding a hearing on the matter, shall
 43 permanently revoke the license of a person who is known by the board
 44 to have been convicted of any of the following ~~offenses~~ **felonies**:

- 45 (1) **Kidnapping (IC 35-42-3-2), if the victim is less than**
 46 **eighteen (18) years of age.**
- 47 (2) **Criminal confinement (IC 35-42-3-3), if the victim is less**
 48 **than eighteen (18) years of age.**
- 49 (3) **Rape (IC 35-42-4-1), if the victim is less than eighteen (18)**
 50 **years of age.**
- 51 ~~(2)~~ (4) **Criminal deviate conduct (IC 35-42-4-2), if the victim is**

less than eighteen (18) years of age.

~~(3)~~ **(5) Child molesting (IC 35-42-4-3).**

~~(4)~~ **(6) Child exploitation (IC 35-42-4-4(b)).**

~~(5)~~ **(7) Vicarious sexual gratification (IC 35-42-4-5).**

~~(6)~~ **(8) Child solicitation (IC 35-42-4-6).**

~~(7)~~ **(9) Child seduction (IC 35-42-4-7).**

~~(8)~~ **(10) Sexual misconduct with a minor (IC 35-42-4-9).**

~~(9)~~ **(11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.**

(12) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(13) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(14) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(15) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(16) Dealing in a counterfeit substance (IC 35-48-4-5).

(17) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10(b)).

~~(d)~~ **(e)** A license may be suspended by the state superintendent as specified in IC 20-6.1-4-13.

SECTION 3. IC 20-6.1-4-10, AS AMENDED BY P.L.228-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) An indefinite contract with a permanent teacher may be canceled in the manner specified in section 11 of this chapter ~~for only~~ **for one (1) or more of** the following grounds:

(1) Immorality.

(2) Insubordination, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation.

(3) Neglect of duty.

(4) Incompetency.

(5) Justifiable decrease in the number of teaching positions.

(6) A conviction for

~~(A) rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age;~~

~~(B) criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age;~~

~~(C) child molesting (IC 35-42-4-3);~~

~~(D) child exploitation (IC 35-42-4-4(b));~~

~~(E) vicarious sexual gratification (IC 35-42-4-5);~~

~~(F) child solicitation (IC 35-42-4-6);~~

~~(G) child seduction (IC 35-42-4-7);~~

~~(H) sexual misconduct with a minor as a Class A or B felony (IC 35-42-4-9); or~~

~~(I) incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age; or~~

an offense listed in IC 20-6.1-3-7(d).

(7) Other good and just cause.

When the cause of cancellation is ground (1), (2), or (6), the

cancellation is effective immediately. When the cause of cancellation is ground (3), (4), (5), or (7), the cancellation is effective at the end of the school term following the cancellation.

(b) An indefinite contract may not be canceled for political or personal reasons.

SECTION 4. IC 20-6.1-4-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10.5. (a) An indefinite contract with a semipermanent teacher may be canceled in the manner specified in section 11 of this chapter only for **one (1) or more of the** following grounds:

- (1) Immorality.
- (2) Insubordination, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation.
- (3) Neglect of duty.
- (4) Substantial inability to perform teaching duties.
- (5) Justifiable decrease in the number of teaching positions.
- (6) Good and just cause.
- (7) The cancellation is in the best interest of the school corporation.
- (8) A conviction for
 - (A) ~~rape (IC 35-42-4-1); if the victim is less than eighteen (18) years of age;~~
 - (B) ~~criminal deviate conduct (IC 35-42-4-2); if the victim is less than eighteen (18) years of age;~~
 - (C) ~~child molesting (IC 35-42-4-3);~~
 - (D) ~~child exploitation (IC 35-42-4-4(b));~~
 - (E) ~~vicarious sexual gratification (IC 35-42-4-5);~~
 - (F) ~~child solicitation (IC 35-42-4-6);~~
 - (G) ~~child seduction (IC 35-42-4-7); or~~
 - (H) ~~incest (IC 35-46-1-3); if the victim is less than eighteen (18) years of age;~~

an offense listed in IC 20-6.1-3-7(d).

(b) An indefinite contract with a semipermanent teacher may not be canceled for political or personal reasons.

(c) Before the cancellation of a semipermanent teacher's indefinite contract, the principal of the school at which the teacher teaches shall provide the teacher with a written evaluation of the teacher's performance before January 1 of each year. Upon the request of a semipermanent teacher, delivered in writing to the principal within thirty (30) days after the teacher receives the evaluation required by this section, the principal shall provide the teacher with an additional written evaluation.

SECTION 5. IC 34-13-3-3, AS AMENDED BY P.L.1-2002, SECTION 144, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

- (1) The natural condition of unimproved property.
- (2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not

foreseeable.

(3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.

(4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.

(5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

(A) a set of rules governing the use of the extreme sport area;

(B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and

(C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

(6) The initiation of a judicial or an administrative proceeding.

(7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.

(8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

(9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.

(10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8,

a **pretrial conditional release program under IC 35-33-8**, or a community corrections program under IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73) if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-8.1-5.1-7(b).

(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;

(B) an information system; or

(C) equipment using microchips;

that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, this subdivision expires June 30, 2003.

(22) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

SECTION 6. IC 34-13-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. The combined aggregate liability of all governmental entities and of all public employees, acting within the scope of their employment and not excluded from liability under section 3 of this chapter, does not exceed three hundred thousand dollars (\$300,000) for injury to or death of one (1) person in any one (1) occurrence and does not exceed five million dollars (\$5,000,000) for injury to or death of all persons in that occurrence. A governmental entity **or an employee of a governmental entity acting within the scope of employment** is not liable for punitive damages.

SECTION 7. IC 34-13-3-5, AS AMENDED BY P.L.192-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Civil actions relating to acts taken by a board, a committee, a commission, an authority, or another

instrumentality of a governmental entity may be brought only against the board, the committee, the commission, the authority, or the other instrumentality of a governmental entity. A member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may not be named as a party in a civil suit that concerns the acts taken by a board, a committee, a commission, an authority, or another instrumentality of a governmental entity where the member was acting within the scope of the member's employment. For the purposes of this subsection, a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity is acting within the scope of the member's employment when the member acts as a member of the board, committee, commission, authority, or other instrumentality.

(b) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity, whose conduct gave rise to the claim resulting in that judgment or settlement. A lawsuit alleging that an employee acted within the scope of the employee's employment ~~must be exclusive to the complaint and~~ bars an action by the claimant against the employee personally. However, if the governmental entity answers that the employee acted outside the scope of the employee's employment, the plaintiff may amend the complaint and sue the employee personally. An amendment to the complaint by the plaintiff under this subsection must be filed not later than one hundred eighty (180) days from the date the answer was filed and may be filed notwithstanding the fact that the statute of limitations has run.

(c) A lawsuit filed against an employee personally must allege that an act or omission of the employee that causes a loss is:

- (1) criminal;
- (2) clearly outside the scope of the employee's employment;
- (3) malicious;
- (4) willful and wanton; or
- (5) calculated to benefit the employee personally.

The complaint must contain a reasonable factual basis supporting the allegations.

(d) **This subsection applies when the governmental entity defends or has received proper legal notice and has the opportunity to defend an employee for losses resulting from the employee's acts or omissions.** Subject to the provisions of sections 4, 14, 15, and 16 of this chapter, the governmental entity shall pay any judgment ~~compromise, or settlement~~ of a claim or suit against an employee when ~~(1)~~ the act or omission causing the loss is within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss. ~~and~~

~~(2) the:~~

- ~~(A) governor in the case of a claim or suit against a state employee; or~~
 - ~~(B) governing body of the political subdivision; in the case of a claim or suit against an employee of a political subdivision;~~
- determines that paying the judgment compromise or settlement is

in the best interest of the governmental entity.

(e) The governmental entity shall provide counsel for and pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(f) This chapter shall not be construed as:

(1) a waiver of the eleventh amendment to the Constitution of the United States;

(2) consent by the state of Indiana or its employees to be sued in any federal court; or

(3) consent to be sued in any state court beyond the boundaries of Indiana.

SECTION 8. IC 34-13-4-1, AS AMENDED BY P.L.192-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. If a present or former public employee, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity, is or could be subject to personal civil liability for a loss occurring because of a noncriminal act or omission within the scope of the public employee's employment which violates the civil rights laws of the United States, the governmental entity **(when the governmental entity defends or has the opportunity to defend the public employee)** shall, subject to IC 34-13-3-4, IC 34-13-3-14, IC 34-13-3-15, and IC 34-13-3-16, pay:

(1) any judgment compromise, or settlement (other than for punitive damages) of the claim or suit; when: or

(2) any judgment for punitive damages, compromise, or settlement of the claim or suit if:

(1) (A) the governor, in the case of a claim or suit against a state employee; or

(2) (B) the governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision;

determines that paying the judgment **for punitive damages**, compromise, or settlement is in the best interest of the governmental entity. The governmental entity shall also pay all costs and fees incurred by or on behalf of a public employee in defense of the claim or suit.

SECTION 9. IC 34-30-2-84.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 84.5. IC 20-6.1-3-7 (Concerning a person who makes a report concerning a teacher).**

SECTION 10. IC 35-42-4-7, AS AMENDED BY P.L.228-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) As used in this section, "adoptive parent" has the meaning set forth in IC 31-9-2-6.

(b) As used in this section, "adoptive grandparent" means the parent of an adoptive parent.

(c) As used in this section, "child care worker" means a person who:

(1) provides care, supervision, or instruction to a child within the

scope of the person's employment in a ~~public or private school or~~
shelter care facility; **or**

(2) is employed by a:

(A) school corporation; or

(B) nonpublic school;

attended by a child who is the victim of a crime under this chapter.

(d) As used in this section, "custodian" means any person who resides with a child and is responsible for the child's welfare.

(e) **As used in this section, "nonpublic school" has the meaning set forth in IC 20-10.1-1-3.**

(f) As used in this section, "school corporation" has the meaning set forth in IC 20-10.1-1-1.

(g) As used in this section, "stepparent" means an individual who is married to a child's custodial or noncustodial parent and is not the child's adoptive parent.

~~(f)~~ **(h)** If a person who is:

(1) at least eighteen (18) years of age; and

(2) the:

(A) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or

(B) child care worker for;

a child at least sixteen (16) years of age but less than eighteen (18) years of age;

engages **with the child** in sexual intercourse, ~~or~~ deviate sexual conduct (as defined in IC 35-41-1-9), ~~with the child~~, **or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult**, the person commits child seduction, a Class D felony.

(Reference is to EHB 1620 as printed March 28, 2003.)

Conference Committee Report
on
Engrossed House Bill 1620

Signed by:

Representative Lawson L
Chairperson

Senator Server

Representative Ayres

Senator Sipes

House Conferees

Senate Conferees